IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr .Appeal No.489 of 2000.

Date of Decision :11th October, 2007.

State of H.P. …Appellant.

Versus:

Padam Singh and another. …Respondents.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?[1]

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For Respondents. Ms.Madhu Sharma, Advocate.

Sanjay Karol, J(Oral).

The present appeal arises out of the judgment dated 14th March, 2000 passed by Judicial Magistrate, Ist Class, court No.2 Mandi in Police Challan No.622-1/99/96 titled as State of H.P. Vs. Padam Singh and another acquitting the accused of the charged offence under Sections 32 and 33 of the Indian Forest Act (hereinafter referred to as 'the Act') and Section 379 of the Indian Penal Code.

As per the case of the prosecution on 14th March, 1995 Paras Ram (PW-4) saw accused-Padam Singh and his wife Sauni Devi cut Devdar tree from Demarcated Protected Forrest (D.P.F). Kujri forest, District Mandi. H.P. The logs of the said tree were dragged by the accused persons and taken to their house where they were buried in the field. The matter was reported by PW-4 to Shri

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Bipan Sharma (PW-1) next morning who in turn reported the matter to Prem Dass (PW-2) , on the basis of which an F.I.R. No.57/95 (Ext.PW-10/A) dated 23rd March, 1995 was registered with Police Station, Gohar under Sections 32 and 33 of the Indian Forest Act and 379 of the Indian Penal Code. The investigation was carried out by Shri Anant Ram (PW-11) who got the forest land demarcated, prepared the spot map, seized the implements with which the tree was felled and also the stolen property (logs) and after recording the statements of the witnesses filed the challan in the Court for trial.

The accused persons were charged for an offence under Sections 32 and 33 of the Indian Forest Act as also Section 379 read with Section 34 I.P.C. They pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined 11 witnesses. The statements of the accused under Section 313 Cr.P.C. were also recorded. During the pendency of the trial, accused No.2 expired and the case was dropped against her.

After examining the material on record and more particularly the deposition of witnesses, the court below acquitted accused No.1 of the charged offence on the ground that the prosecution had not been able to prove its case beyond reasonable doubt and the statements of the eye witnesses being contradictory could not be relied upon to convict the accused of the charged offence.

Complainant Bipan Sharma (PW-1) is the Forest Ranger, Prem Dass (PW-2) is the Forest Guard. Roshan Lal (PW-3), Bhup Singh (PW-5), Tula Ram (PW-6) and Dharam Singh (PW-7) are

the independent witnesses. Paras Ram (PW-4) is the forest official who has witnessed the felling of the tree. Beli Ram (PW-8) Patwari and Chet Ram (PW-9) Kanungo, have together carried out the demarcation of the land. S.I.Bhed Singh (PW-10) is the formal witness and ASI Anant Ram (PW-11) is the person who has carried out the investigation of the case.

Having perused the statements of the witnesses, it is clear that PW-3, PW-5 and PW-7 have not supported the case of the prosecution at all and have been cross-examined by the Public Prosecutor. PW-3 and PW-5 are the witnesses to the recovery of timber (logs) from the house of the accused vide seizure memo (Ext.PW-1/B). PW-7 is the witness to the seizure memo (Ext.PW-6/A) seizing the implements Ext.P-1, P-2 and P-3 with which the tree was felled. All the three witnesses have deposed that nothing was recovered in their presence. Thus, the prosecution has not been able to prove the recovery of the logs as also the implements with which the tree was felled.

Now in order to attract the provision of Sections 32 and 33 of the Indian Forest Act, it was incumbent upon the prosecution to show that the Government had issued the notification declaring the trees and land to be protected forest which is commonly known as demarcated protected forest (D.P.F). For violation of Section 33 prior notification under Section 30 of the Indian Forest Act is necessary. There is no material on record to show that any such notification had been issued by the Government protecting the area in question. Similarly in order to attract the provision of Section 32, it was incumbent upon the prosecution to show as to which of the rules

framed by the State Government for protecting the forest have been violated by the accused. The investigation is extremely tardy in the present case. Thus, it cannot be said that there is any violation of provisions of Sections 32 and 33 of the Indian Forest Act.

PW-11 in his statement has admitted that the distance between the place where the tree is alleged to have been felled and the house of the accused from the place of recovery of logs is more than 15 Kms. There is no material on record to show that there were dragging marks all along the said distance i.e. from the jungle to the place of the recovery. No witness has testified to this effect. Site plan Ext.PW-1/A, Ext.PW-1/B, Ext.PW-1/C also do not indicate the same. The version of the prosecution to this extent stands falsified and cannot be accepted. The court below has correctly held that the land in question from where the timber was recovered is shown to be in joint possession of Shri Inder Singh and Ruldu who is the father of accused No.1.There is no material on record to show that the said land was exclusively owned and possessed by the accused persons.

Through the statement of PW-6, it has come on record that there is animosity between the accused and PW-4. I have examined the statement of PW-4 who is the star witness of the prosecution. In his cross-examination he has admitted that apart from accused he had also seen Jindu Ram, Kapoor Singh, Shiv Ram and Rup Singh in addition to 14-15 other persons on the spot at the time of the felling of the tree. He has further stated that he did not disclose the names to PW-1. There is no explanation forthcoming as to why there was a suppression and concealment of this fact by him. Importantly, no action has been taken against the said persons. The

record also does not show that the investigating agency had ever tried to investigate the case against the other persons so testified by PW-4.

Further as per the version of PW-4 both he and Sh. Neter Singh has witnessed the commission of crime. This Neter Singh has neither been associated during the investigation nor examined in the Court. In fact, he was the only independent witness who could have revealed the truth but unfortunately was not associated at all. There is no explanation as to why it has not been done.

In view of the animosity between the accused and PW-4, his version alone cannot be relied upon to hold the accused guilty of the charged offence. Further, the Court below has found the statement of PW-1, PW-2 and PW-4 to be contradictory. The contradiction is material. As per the version of PW-4 he reported the matter to PW-1 on the very next day of the incident which would be 16th March, 1995. As per the version of PW-1 the matter was reported on 18th March, 1995 by his subordinate and as per the version of PW-2 the matter was reported to him by Paras Ram (PW-4) on 19th March, 1995. This contradiction gains importance in view of the aforesaid discussions as also the fact that no action was taken by the forest officials for promptly reporting the matter to the Police as there is delay in lodging the F.I.R. which was done on 23rd March, 1995.

For the aforesaid discussions, I see no reasons to interfere with the judgment of the trial Court. The appeal is accordingly dismissed. The bail bonds are discharged.

I must place on record the appreciation for the assistance rendered by Ms.Madhu Sharma a Junior Member of the Bar, who appeared for the respondent.

(Sanjay Karol),
Judge.

October 11, 2007(R)